
(2021) 10 RAJ CK 0080
In the Rajasthan High Court
Case No : S.B. Criminal Appeal No. 709 Of 2016

Fuljhari

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 374(2)
Indian Penal Code, 1860 — Section 302, 304B, 304B(2), 306, 498A

Citation : (2021) 10 RAJ CK 0080

Hon'ble Judges : Manoj Kumar Garg, J

Bench : Single Bench

Advocate : Anil Upadhyaya, B.R. Bishnoi, Rakesh Matoria

Final Decision : Partly Allowed

Judgement

Manoj Kumar Garg, J

Instant criminal appeal has been filed by the appellant under Section 374(2) Cr.P.C. against the judgment dated 02.07.2016 passed by learned Special Judge, Women Atrocities Cases, Sriganganagar in Sessions Case No. 85/2014 by which the learned Judge convicted the appellant for offence under Section 304B and 498A IPC and sentenced to undergo ten years RI with Rs.5000/-fine, default of payment of fine, to undergo six months RI and two years R.I with fine of Rs. 2000/-, in default of payment of fine to undergo two months R.I respectively.

Succinctly stated, the fact of the case are that the complainant Sanjay Kumar lodged a written report with the Station House Officer, Mahila Police Station, Sriganganagar alleging inter alia that his younger sister Arti was married to Sunil Kumar on 23.05.2014 and they have given dowry to the inlaws as per their status. It is alleged that after 10-15 days of marriage, the mother-in-law and husband started harassing her physically and mentally for demand of dowry. It was further mentioned in the FIR that the husband Sunil Kumar left his sister at parental home but after about ten days, her husband came to took her back. It is

alleged that on the date of incident, when the brother-in-law of complainant Lal Babu went to inlaws' house of Arti to bring them food, he informed telephonically that the inlaws were quarrelling with Arti. After some time, Lal Babu again called the complainant and told him that Arti has lit herself on fire. When they reached on the spot, they found that Arti was lying dead on floor.

On the basis of this report, an FIR No. 179/2014 was registered for the offences under Sections 498-A and 304-B and investigation commenced.

After usual investigation, the police submitted chargesheet against the accused appellant for offence under Section 304-B and 498A IPC in the alternative 302 IPC. The charges were framed against the appellant who denied the same and claimed trial.

The prosecution in its support examined eleven witnesses in all and exhibited 17 documents. The statement under Section 313 Cr.P.C. was recorded. No witness was examined on the defence side.

After conclusion of trial, the learned Judge, Women Atrocities Cases, Sriganganagar acquitted the appellant for offence under Section 302 IPC but convicted him for offence under Section 304-B and 498A IPC vide judgment dated 02.07.2016 and passed the sentences as mentioned earlier.

At the threshold, learned counsel for the appellant submits that the charge under Section 304B IPC cannot be sustained against the appellant owing to lack of convincing proof to establish that the deceased lady was harassed and humiliated in the matrimonial home on account of demand of dowry soon before her death. He craved acquittal of the accused of the charge for offence under Section 304B IPC and urged that at best, even if the evidence of the prosecution witnesses is accepted as such, then too, the conviction of the accused can only be recorded for the offence under Section 306 IPC. In the alternative, he urged that considering the fact that the appellant is an old woman and there is no evidence to show the existence of exceptional circumstances warranting the sentence of ten years R.I, the sentence of ten year's rigorous imprisonment awarded to the appellant deserves to be reduced to the minimum permissible term of seven years for the offence under Section 304B IPC.

On the other hand, the learned Public Prosecutor opposed the submissions made by the learned counsel for the appellant. The learned PP submitted that there is neither any occasion to interfere with the sentence awarded to the accused appellant nor any compassion or sympathy is called for in the said case. Learned Public Prosecutor produced a report from Superintendent, Central Jail, Bikaner according to which, the appellant has so far undergone imprisonment of 07 years 10 months and 08 days.

It is an admitted fact that the deceased was married to the accused husband and died within a period of seven years of marriage in the matrimonial home. The tenor of the evidence of material witnesses is sufficient to satisfy the Court that

the deceased was harassed and humiliated in the matrimonial home on account of demand of dowry soon before her death. The trial court was perfectly justified in convicting the appellant for the offences under Sections 498A and 304B IPC.

Having held so, to deal with the aspect of sentences awarded to the accused appellant, it is relevant to refer to Section 304B(2) of the IPC which reads as below:

"Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

On a plain reading of the Section, it is clear that the minimum sentence provided for the offence is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. As the legislature has provided a minimum sentence for the offence and since, the higher sentence which may extend to imprisonment for life has been provided by way of an exception, apparently, for awarding more than the minimum sentence, the Court would have to look for special features in the case.

In the present case, on the date of incident, some altercation took place which incident appears to be the trigger for Smt. Arti to end her life by setting herself on fire. The case does not involve any such feature which warrants award of sentence of ten years rigorous imprisonment to the accused appellant. I feel that the ends of justice would be subserved by reducing the sentence awarded to the appellant for the offence under Section 304B IPC from ten year rigorous imprisonment to seven years rigorous imprisonment.

In this background, while affirming the impugned Judgment on the finding of the conviction of the appellant for the offences under Sections 498A and 304B IPC, the substantive sentence awarded to her by the trial court for the offence under Section 304B IPC is liable to be reduced from ten years rigorous imprisonment to seven years rigorous Imprisonment. The sentence of fine and the default imprisonment awarded in lieu thereof is maintained.

Accordingly, the appeal is partly allowed. While maintaining the appellant's conviction and sentence for offence under Section 304 B IPC, the sentence awarded to her is reduced to the period of seven years rigorous imprisonment. No interference is called for in conviction and sentence recorded by the trial court for offence under Section 498A IPC. The impugned judgment dated 02.07.2016 stands modified to said extent.

The appellant has suffered imprisonment of 07 years 10 months and 08 days. Thus, she has undergone the sentence in default of payment of fine also. In these circumstances, the appellant shall be released forthwith, if not required in any other case.

The record of the trial court be sent back forthwith.